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A PROTEST AGAINST ADMINISTERING CRIMINAL LAW BY INJUNCTION.—THE DEBS' CASE.

By WILLIAM DRAPER LEWIS, Ph.D.

On the 14th inst. Eugene V. Debs, President of the American Railway Union, was sent to prison for six months, in the county jail in Chicago, by Judge WILLIAM A. WOODS, of the Federal Court, for contempt of an injunction. Other members of the Railway Union were given three months each. The injunction which, it is claimed, Debs disregarded was the celebrated omnibus injunction issued by the Federal Circuit Court last summer during the Pullman strike restraining all persons from interfering with the property and trains of certain railroads running out of Chicago. Judge WOODS said in his opinion, "If the injunction was, for any reason, totally invalid, no violation or disregard of it could constitute a punishable contempt; but, if the court acquired jurisdiction and did not exceed its powers in the particular case, no irregularity or error in the procedure or in the order itself could justify disobedience of the writ." He maintains the court's right of jurisdiction to issue such an injunction by many quotations from English and American decisions. Those who desire to follow the principal cases should read the article on "Equity Jurisdiction as Applied to Crimes and Misdemeanors," by the late RICHARD C. McMURTRIE, Esq. It was, in some sense, the finest short article which that eminent jurist ever wrote (AM. L. REG. & REV., vol. 31, p. 1). The editorial notes by the present writer in the same volume (p. 782) show the historical development of the law on the subject. It is not now intended to take up those decisions again. Suffice it to say here that the position of Judge WOODS is supported by several cases decided in other Federal Courts, and by an expression of Mr. Justice MILLER in the Supreme Court of the United States, as also by an English case decided by Vice-Chancellor MALINS. The principal case in the Federal Courts

is that of the *Cœur D'Alene Consolidated Mining Co. v. Miners' Union of Wander et al.*, reported in 51 Fed. Rep. 260 (see AM. L. REG. & REV. 710). This case grew out of the trouble in the mining districts of Idaho. The striking miners were in possession of the mines, were preventing the new employés from working, and, indeed, had carried the new men over the borders of the Territory into Montana. The court granted an injunction, at the request of the company, restraining the members of the Union from further interfering with, threatening or molesting its employés or entering its works. There was no arrest or imprisonment as the result of any violation.

Another celebrated case in the District Courts is where Judge BREWER committed a man for contempt of court for interfering with the running of engines on a road which was in the hands of a receiver: *United States v. Kane*, 23 Fed. Rep. 748. The receivership, however, was made the main ground of the decision. The English case referred to is that of *Springhead Spinning Co. v. Riley*, Law Rep., 6 Eq. 551, where Vice-Chancellor MALINS issued an injunction restraining the members of the Union on a strike from placarding the town with posters asking workmen not to work for their old employers. This case has been made the basis of the principal American cases. The case in the Supreme Court of the United States was that of *Eilenbecken v. The District Court of Plymouth County*, reported in 139 U. S. 31. A statute of the State of Iowa declared that the selling of liquor was a nuisance, and that any citizen in the county where liquor was sold or thought to be sold, could apply for an injunction to restrain the alleged seller. The question of the contempt of this injunction was to be tried by the judge issuing the same on proof by affidavit of the fact of violation. One Eilenbecken, having been convicted in this way, the case was taken to the Supreme Court of the United States, the principal assignment of error being that the statute in question was void because, in effect, it deprived the plaintiffs, who were charged with selling liquor, "of the equal protection of the laws, and it prejudiced the rights and privileges of that particular class of persons, and denies to them the right of

trial by jury." The court held that the record did not show that the plaintiffs would have been denied the right of trial by jury had they demanded it. This view of the case, which was perhaps taken to avoid meeting the most serious question of constitutional law that had presented itself to the court for years, deprives the case of weight as an authority. Mr. Justice MILLER, however, went on to say, "We know of no hindrance in the Constitution of the United States to the form of proceedings, or to the court in which this remedy shall be had." It was this expression which excited the ire of Mr. McMURTRIE, and on which he based the article above referred to.

Apart from these decisions, let us examine for a moment what the real question involved in all these cases is, and the arguments which can be made on one side and the other. The question presented by the Debs' Case is shortly this: Can the fact that the crime with which the man is charged injured property and was a public nuisance, justify the court in depriving him of the right of trial by jury? The strongest argument in favor of the affirmative to this question is to be found in the facts of the Debs' Case. The court, before they issued the injunction, had ample evidence that a large body of persons in the community, some of whom had no connection with the railroads in and near Chicago, were by public meetings, intimidation and actual violence, preventing the railroads from performing the public duties for which they were created and greatly injuring their property. The actions of Debs and his followers was a public nuisance of the most serious and alarming kind. It is the duty of the court to protect property and abate nuisances injurious to property. Therefore, it is said that they had a right to issue the injunction, and the injunction being issued, a right to examine into any alleged contempt by the methods ordinarily used by a court of equity when investigating facts. And should the judge on such an examination conclude that the injunction had been violated he had a right to imprison for any length of time he saw fit those who, in his judgment, had disregarded his order.

The argument, on the other side of the question, may be stated somewhat as follows: Admitting that Debs and

his followers were acting in such a way as to be a public nuisance, and to threaten private property, and admitting that the court of equity is especially concerned in the protection of property, it does not follow that this property is under the protection of the courts, or the nuisance of such a character that the court of its own motion can take cognizance of it. It is only property in a particular position, or threatened with injury from a particular source, which equity can interfere to protect. For instance, if I come into a court of equity claiming that my tenant for a term of years, with no right to commit waste, is cutting down the trees on my place, equity will issue an injunction until the rights of the matter can be ascertained. The basis of this action is, that it is the business of the courts to see that one claiming to be the owner of property shall not destroy it or injure it, if another claims an interest in it, until the mutual rights of the parties are determined. It is the claim of right on both sides which gives the court of equity jurisdiction. If a robber threatens to break in my house by night and plunder my premises, did ever any one hear of my going into a court of equity to restrain him?

Again, that courts have jurisdiction to restrain a nuisance is admitted by all; but that alone is a nuisance which the courts will restrain which results from a man's action with his own property so as to adversely affect the property of other private persons or the property of the state. The following instances illustrate what is meant by this distinction. If a railroad company, or persons pretending to be incorporated, and pretending to have authority to lay tracks over private property, commence to do so, the state, or any person whose property is adversely affected, claiming that the pretended corporation, either does not exist, or has not the right which it claims, can obtain from the court a temporary injunction until those rights are determined.

Again, if a man, claiming that a street is his private way, obstructs the free passage of the public, the state can obtain an injunction restraining him from doing so until the rights of himself and the public in the way are determined. Or again,

if one railroad claims that another which is about to cross its tracks has no right to do so, and undertakes to prevent by force of arms the workmen of the first company from crossing their tracks, an injunction can be obtained restraining both parties from altering their position until the question of right has been settled. As to questions of a man's use of his own property which injures the property of others, we can mention a man being restrained by injunction from carrying on a business on his property which is a nuisance to the adjoining owners or to the community. But it is urged that the underlying thought of all these instances is, that the man who is restrained by injunction, is acting as he does under a claim of right in property: *And that by so doing, he has enabled one who disputes that right, to bring him into a civil court to determine the disputed question.* Pending that determination, the property being peculiarly under the care of the court, can be protected by injunction, which the court has the summary right to enforce by commitment for contempt. Debs and the Chicago strikers of last summer made no claim to legal interest in property. Their actions were either innocent or criminal. It is alleged that they were criminal. The constitution provides that no man shall be judged guilty of a crime without indictment and trial by jury and all its attendant incidents.

This view of the case is that which appeals to the writer. The circumstances of the Chicago strikers either did or did not leave the administration of criminal justice and the preserving of social order within the ordinary power of the criminal court and the executive branch of the government. If, as is probable, the executive arm of the government, backed by the ordinary processes of the criminal courts, was not sufficient to protect property and life, then the case should have been treated, as on those facts it was, an exceptional case, and martial law declared. There seems to us to have been no necessity to strain the principles of the procedure of the civil courts, and to make a precedent which will be used over and over again to undermine the most valuable of the safeguards of individual liberty—the trial by jury.